IN THE

Supreme Court of the United States

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October Term, 1970

No. ~~1502~~ 70-117

CHARLES JOSEPH KASTIGAR,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MICHAEL GOREAN STEWART,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Consolidated Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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CHARLES JOSEPH KASTIGAR,

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UNITED STATES OF AMERICA,

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MICHAEL GOREAN STEWART,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Consolidated Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners Charles Joseph Kastigar and Michael Gorean Stewart respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this (consolidated) proceeding on March 10, 1971.

Opinion Below.

The appeal was expedited to judgment within thirty (30) days after filing of notice of appeal pursuant to 28 U.S.C. §1826(b).

A written opinion was issue on March 29, 1971. A copy thereof is attached hereto as Appendix 1.

Jurisdiction.

The judgment of the Court of Appeals was entered on March 10, 1971. No petition for rehearing was filed. This petition for certiorari is filed within thirty (30) days of the date of entry of the judgment of the Court of Appeals. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Question Presented.

Whether under a grant of use-immunity conferred under a federal use-immunity statute, a witness can be compelled to testify before a federal grand jury over his claim of the Fifth Amendment privilege against self-incrimination when the immunity so conferred leaves the witness subject to prosecution for the transaction concerning which he has been required to testify.

Constitutional and Statutory Provisions Involved.

Fifth Amendment, United States Constitution:

> "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law. . . ."

§§202-203, Organized Crime Control Act of 1970; United States Code, Title 18:

> "§6002. *Immunity Generally.*
>
> "Whenever a witness refused, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—
>
> "(1) a court or grand jury of the United States,
>
> "(2) an agency of the United States, or
>
> "(3) either House of Congress, a joint com-

mittee of the two Houses, or a committee or a sub-committee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"§6003. *Court and grand jury proceedings*

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

"(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination."

Statement of the Case.

Petitioners were each summoned to appear and testify before a federal grand jury in Los Angeles, California on February 4, 1971.[1]

Before being examined, petitioners were requested to and did appear, with counsel, in the United States District Court for the Central District of California, Hon. Avery E. Crary, Judge Presiding, whereupon the Assistant United States Attorney presented a written application for an order compelling petitioners to testify under a grant of use-immunity pursuant to Title 18, United States Code, Sections 6002-6003. Petitioners, by their counsel, opposed the application on grounds, *inter alia,* that the statutes did not provide immunity coextensive with the protection afforded by the Fifth Amendment and therefore the proposed order would violate that constitutional provision.

The court continued the cause to February 11, 1971, and ordered petitioners to reappear at that time.

On February 11, the District Court made and entered a written order which noted that immunity under

---

[1]Petitioner Kastigar had previously appeared on the same transaction before the grand jury on September 9, 1970, pursuant to subpoena, at which time he declined to testify on grounds of self-incrimination. No immunity was offered at that time, the statute at bar not yet having become operative, and he was excused.

Title 18 U.S.C. §§6002 and 6003 had been conferred on each petitioner, and which ordered each petitioner to "appear forthwith before the grand jury and testify or produce evidence with respect to all matters under inquiry by the grand jury."

A copy of said order as to petitioner Kastigar is attached hereto as Appendix 2, and as to petitioner Stewart, as Appendix 3, and by reference is incorporated herein and made a part hereof.

Petitioners were then directed by the court to, and did each appear before the grand jury. Petitioner Kastigar was asked the following question:

> "Q. [By the Assistant U.S. Attorney]: Mr. Kastigar, as we told you before, the grand jury has received a great deal of information concerning a situation in which you had orthodontic braces placed on your teeth just prior to reporting for military induction and had them removed just after a word by a Dr. Bernard Bender, with offices at 8328 DeSoto in Canoga Park.
>
> "Would you tell us, please, how that came about?"

To which question petitioner Kastigar answered as follows:

> "I'm sorry, I decline to say anything about that on the basis that my answer may tend to incriminate me and on the advice of counsel."

In response to another question, petitioner Kastigar stated he would continue invoking the Fifth Amendment privilege against self-incrimination notwithstanding the court's order.

Petitioner Stewart was asked the following question before the grand jury:

> "Q. [By Assistant U.S. Attorney]: Would you please tell us how it came about that you went to Dr. Bender for the so-called dental services which I described."

To which Stewart replied:

> "Okay, on that I will have to respectfully decline to answer on the ground that it may tend to incriminate me."

Petitioner Stewart likewise indicated that he would invoke the Fifth Amendment privilege in response to all further questions.

Thereafter, both petitioners appeared as ordered before said District Court. The grand jury reporter read the afore-described responses of each petitioner. The court then ordered petitioners to answer said question on pain of imprisonment for civil contempt. Each petitioner again refused upon a claim of the privilege against self-incrimination.

The court thereupon adjudged each petitioner to be in contempt, and ordered them into the custody of the Attorney until the questions were answered or during the life of the grand jury.

But upon petitioners' request, that order was stayed until noon, February 16, 1971.

On February 12, 1971, petitioners each filed Notice of Appeal from said orders, and a motion for stay of execution pending disposition thereof on appeal.

On February 16, 1971, the Court of Appeals for the Ninth Circuit extended the stay pending disposition of petitioners' said motion; and on February 19, 1971,

further extended the stay pending disposition of the appeal in an order which also consolidated petitioners' respective appeals, directed that the appeal be expedited under 18 U.S.C. §1826(b), and provided a briefing and argument schedule which allowed petitioners six (6) days to file their opening brief.

A copy of said Order of the Court of Appeals dated February 19, 1971, is attached hereto as Appendix 4.

The appeal was argued on March 10, 1971;[2] and later that day, the Court of Appeals rendered its judgment affirming the orders of the District Court adjudging petitioners in civil contempt and ordering them confined.

A copy of said judgment of the Court of Appeals is attached hereto as Appendix 5.

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[2]Counsel for petitioners was permitted a total of only fifteen minutes in which to present his argument.

REASONS FOR GRANTING CERTIORARI.

1. The Judgment of the Courts Below Is in Direct Conflict With This Court's Opinion in Counselman v. Hitchcock, 142 U.S. 547 (1892).

In *Counselman v. Hitchcock,* 142 U.S. 547, at pages 585-586, this Court said:

> "No statute which leaves the party or witness subject to prosecution after he answers the incriminating question put to him can have the effect of supplanting the privilege conferred by the Constitution of the United States. . . . In view of the constitutional provision, a statutory enactment to be valid *must afford absolute immunity against future prosecution for the offense to which it relates.*"

That pronouncement, expressed in the context of a federal use-immunity statute which this Court found violative of the Fifth Amendment, has been accepted by Congress and the courts as a viable constitutional principle for nearly eighty years.

Shortly after *Counselman* was decided, Congress amended the immunity statute in that case to provide transactional immunity. The latter statute was sustained in *Brown v. Walker,* 161 U.S. 591 (1896); and thereafter, every federal immunity statute sustained by the Court conferred absolute immunity. (See: *Ullman v. United States,* 350 U.S. 422 (1956); *cf., Albertson v. Subversive Activities Control Board,* 382 U.S. 70 (1965).)

Even after the "use and fruits" formulation of *Murphy v. Waterfront Commission of New York,* 378 U.S. 52 (1964), which apparently provided the ration-

ale for Sections 6002 and 6003,[3] this Court unanimously reaffirmed *Counselman's* requirement that a federal immunity must afford "absolute immunity against future prosecution for the offense to which the question relates." (*Albertson v. S.C.A.B., supra,* 382 U.S. at p. 80; see also: *Gardner v. Broderick,* 392 U.S. 273, 276 (1968).)

Moreover, the orders of the courts below conflict directly with those lines of decisions, beginning with *Counselman, supra,* 142 U.S. at p. 585, holding that statutory immunity is invalid unless co-extensive "in scope and effect" with the immunity afforded by the Fifth Amendment. (*Murphy v. Waterfront Commission of New York, supra,* 378 U.S. at p. 78.)

It is apparent that the use-immunity provided by Section 6002, 18 U.S.C., far from extending the same protection as the Fifth Amendment, equips the prosecution with a sweeping discovery device denied to the accused by the Jencks Statute (18 U.S.C. §3500), by the limitations of Rule 16 of the Federal Rules of Criminal Procedure, as construed and applied, and by the rarely unveiled secrecy which enshrouds grand jury proceedings and transcripts thereof. (See: *United States v. Procter & Gamble Co.,* 356 U.S. 677, 683 (1958); *Pittsburgh Plate & Glass Co. v. United States,* 360 U.S. 395, 400 (1959); *cf., Dennis v. United States,* 384 U.S. 855, 872 (1966).)

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[3]It is evident from the legislative history of this statute that Congress intended to authorize only "use" rather than "transactional" immunity. (U.S. Code Cong. & Adm. News, 91st Cong., 2d Sess., No. 12, Nov. 20, 1970, at p. 4706.) Thus, the Committee's report on the effect and scope of this immunity statute explains that it—

> ". . . will afford 'use' immunity rather than 'transaction' immunity when a witness before a . . . grand jury . . . asserts his privilege against self-incrimination."

Additionally, Sections 6002 and 6003 enable the government to determine from the lips of a prospective defendant the weaknesses of his defenses—for example, whether in a criminal prosecution he is in a position to testify in his own defense; and if he is, by pinning the accused to testimony which, howeve innocently mistaken, he can change only at the risk of a subsequent perjury prosecution.

The immunity statute at bar permits the prosecution to learn from compelled testimony how to assemble diverse pieces of independent evidence already in its possession against an accused whose connection thereto had previously gone unnoticed or was not understood.

Finally, use-immunity statutes such as that at bar afford government investigators with virtually undetectable leads to independent witnesses and provide the mechanism for acquiring information which can be used to "refresh" an independent witness's recollection.

The Fifth Amendment protects such prospective defendants by affording the witness total protection against such use of his compelled testimony. So does statutory transaction immunity.

But "use-immunity" does not and cannot have the same scope and effect provided by the self-incrimination clause of the Fifth Amendment. Therefore the judgments of the courts below, resting as they do on a contrary view of that constitutional provision, appear to be in utter conflict with the decisions of this Court.

2. The Decisions of the Courts Below Raise Constitutional Questions of Far-Reaching Importance.

In *Piccirillo v. State of New York*, No. 97, ... U.S. ....., 27 L. Ed. 2d 596 (Jan. 25, 1971) (writ dismissed as improvidently granted) this Court deemed substantially the same question presented here to be of "far-reaching importance."

Since then, this Court has agreed to review two cases involving state "use-immunity" statutes which present essentially the same issues as those brought by *Piccirillo, supra,* and by petitioners, namely: *Sarno v. Illinois Crime Investigating Committee,* No. 565, 39 LW 3375 (March 2, 1971) and *Zicarelli v. New Jersey State Commission, No. 91,* 39 LW 3375 (March 2, 1971).

In *Zicarelli, supra,* two of the questions on which probable jurisdiction was noted, ask:

> (1) Whether a state immunity statute which merely prevents the subsequent use of a witness's testimony and evidence derived therefrom is sufficient to supplant the Fifth Amendment's privilege against self-incrimination; and
>
> (2) Whether *Counselman v. Hitchcock,* 142 U.S. 547 (1892), which stated that absolute immunity against further prosecution is required before the Fifth Amendment may be supplanted, is still the law of the land.

The federal immunity statute involved here, 18 U.S.C. §§6002-6003, is a recent enactment, and represents the first attempt by Congress since *Counselman* to consciously revert to use-immunity. Congress appears to have done so by reading the "use and fruits" language of *Murphy, supra,* as overturning the absolute immunity requirement of *Counselman* and post-*Murphy* decisions.

On the other hand, the "use and fruits" rationale of *Murphy* was invoked "to accommodate the interests of the state and federal governments in investigating and prosecuting crime" (378 U.S. at p. 79). No problem of such accommodation is here involved. Even if it were, this case presents to this Court the constitutionality in any context of a federal use-immunity statute for the first time since *Counselman*.

This seems to be the first federal case arising under §§6002 and 6003 to have reached this Court. It appears to be an appropriate vehicle for clarifying whether the constitutional standards of *Counselman*, or those applied by *Murphy* in a federal-state conflict situation should apply to a federal use-immunity where, as here, "only [the federal] government is involved," and hence, "the danger of prosecution [is] more imminent. . . ." (Concurring opinion of Mr. Justice White in *Murphy v. Waterfront Commission, etc., supra*, 378 U.S. at p. 98.)

3. The Decision of the Court of Appeals Below Is in Conflict With a Decision in Another Circuit.

In *The Matter of the Grand Jury Testimony of Joanne Kinoy*, No. M-11-188 (D.C.S.D.N.Y., decided 1/29/71), the Hon. Constance Baker Motley, D.J., in a memorandum opinion [not yet reported] which relied heavily on *Counselman v. Hitchcock, supra*, and distinguished *Murphy*, denied the government's application for an order compelling Miss Kinoy to answer questions before a federal grand jury under the grant of immunity conferred by §§6002 and 6003, upon the ground that the use immunity offered by the statute at bar was not co-extensive with that afforded by the Fifth Amendment, and hence offended that provision.

The government did not appeal; and so far as petitioners can determine the *Kinoy* opinion is the only judicial decision other than that of the courts below, which has passed on the constitutionality of 18 U.S.C. §§6002 and 6003.

Since petitioners, in their reply brief and at oral argument, expressly called the *Kinoy* opinion to the attention of the Court of Appeals for the Ninth Circuit, it follows from the judgment at bar that the holding and reasoning of *Kinoy* were rejected by the Ninth Circuit.

Conclusion.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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APPENDIX 1.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

Michael Gorean Stewart, Appellant, v. United States of America, Appellee. No. 71-1212

Charles Joseph Kastigar, Appellant, v. United States of America, Appellee. No. 71-1213

[March 29, 1971]

Appeal from the United States District Court for the Central District of California.

Before: KOELSCH, HUFSTEDLER and TRASK, Circuit Judges.

PER CURIAM:

This is an appeal from an order of the district court adjudging the appellants, Michael Stewart and Charles Kastigar, to be in civil contempt and ordering them confined. The order was entered pursuant to Section 301 (a) of the Organized Crime Control Act of 1970, 28 U.S.C. § 1826, when appellants refused to answer questions before a grand jury after having been granted immunity under Section 201(a) of that Act. 18 U.S.C. § 6002. Because the statute pursuant to which this appeal was taken requires that the appeal be disposed of not later than thirty days from its filing, the unpublished order affirming the judgment of the district court was entered and filed on March 10, 1971, with the notation that this opinion of the panel was to follow.

Appellants' difficulties stem from the fact that each of them refused to answer questions put to him by the

federal grand jury after an order granting immunity under 18 U.S.C. § 6001 *et seq.* had been obtained for each. They claim shelter of the Fifth Amendment privilege against self-incrimination. They also assert that the summary procedure provided by 28 U.S.C. § 1826 denies them due process of law.

SELF-INCRIMINATION

Appellants' argue that the immunity provision of the Act[1] affords only a "use immunity." That is, that the answers may be compelled if there is immunity only from federal and state *use* of such testimony in connection with a criminal prosecution against the person testifying. This, they urge, does not satisfy the requirements of the Fifth Amendment or the cases interpreting it, particularly *Counselman v. Hitchcock,* 142 U.S. 547 (1892). Appellants insist that the Constitution requires that for a statute granting immunity to be valid it must afford complete and absolute immunity co-extensive with the immunity provided by the Fifth Amendment.[2]

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[1]Section 201(a) of the Organized Crime Control Act of 1970, 18 U.S.C. § 6002, provides as follows:

> "[T]he witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; *but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness* in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."

[2]"No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."

Although these cases arise in the context of a federal immunity statute, it seems clear that the validity of a state immunity statute is measured by the same yardstick. *See Malloy v. Hogan,* 378 U.S. 1 (1964).

This is accomplished, they assert, only where the witness is accorded "transactional immunity" under the appropriate statute. *Cf. Ullman v. United States,* 350 U.S. 422 (1956); *Brown v. Walker,* 161 U.S. 591 (1896).[3]

There appears to be no question but that a "transaction" statute affords the protection that the Fifth Amendment requires. Here we examine a different statute to determine whether it also may be constitutional. We find that it is.

No case has been cited in which the Supreme Court has held that *only* a transaction statute will suffice, and we have found none. On the contrary, it appears that *Murphy v. Waterfront Commission of New York Harbor,* 378 U.S. 52 (1964), has decided the issue here both with respect to the scope of *Counselman* and also with respect to the extent of the requirements of the Fifth Amendment—at least as the latter apply here.

Murphy was decided on the same day as *Malloy v. Hogan,* 378 U.S. 1 (1964). *Malloy* held that the Fourteenth Amendment prohibits state infringement of the privilege against self-incrimination just as the Fifth Amendment prohibits the federal government from denying the privilege. *Murphy* decided a related question: Whether one jurisdiction within the federal structure

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[3]A typical "transaction" statute is the one held sufficient in *Ullman.* It provides in pertinent part:

> "But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction matter, or thing against self-incrimination, to testify or produce evidence. Nor shall testimony so compelled be used as evidence in any criminal proceeding concerning which he is compelled, after having claimed his priviledge . . . against him in any court." 350 U.S. at 424.

could compel a witness to whom it had granted immunity to give testimony which might then be used to convict him of a crime against another jurisdiction. In the case under consideration here, of course, the issue is one of compulsion to testify before a federal grand jury investigating possible violations of the laws of the United States, after having received immunity under the federal statute.[4] In *Murphy* the Court considered *Counselman* and then stated the rule to be:

> "[W]e hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him." 378 U.S. at 79.

The Court added this significant footnote:

> "Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence." 378 U.S. at 79 n. 18.

It seems apparent from this footnote that the Court does not believe that the immunized testimony must bar all *prosecution* for the "transaction" about which he testified. Rather, the Court makes clear that any evidence used must be free from all taint of compulsion.

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[4] *Supra*, footnote 1.

There must be an "independent legitimate source" for it other than from that evidence produced by the witness under compulsion and its fruits.[5]

Mr. Justice White in his concurring opinion voiced the views that are urged by the appellee and those views would sustain the statute under attack here. *Murphy, supra,* 378 U.S. at 100-07. That a prosecution need not be foreclosed which arises out of any "transaction" to which the witness alludes, is inherent in his statement:

> "In my view it is possible for a federal prosecution to be based on untained evidence after a grant of federal immunity in exchange for testimony in a federal criminal investigation . . . . It is precisely this possibility of a prosecution based on untainted evidence that we must recognize." 378 U.S. at 106.

The statute now under question appears clearly within the protective limitations of the Fifth Amendment as construed by *Murphy*. It proscribes the use of the testimony "or other information" compelled, together with "any information directly or indirectly derived from such testimony or other information." *See also Zicarelli v. New Jersey State Commission of Investigation,* 55 N.J. 249 (1970); 261 A.2d 129, 137-40 (1970), *Prob. juris. noted,* 39 U.S. L.W. 3375 (U.S. March 2, 1971) (No. 91).

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[5]Such a construction is consistent with the rule governing the admissibility of evidence charged to have been obtained by illegal search and seizure in violation of the Fourth Amendment. *Wong Sun v. United States,* 371 U.S. 471 (1963).

DUE PROCESS

Appellants, in addition, urge that 18 U.S.C. § 6002-03 and 28 U.S.C. § 1826, impose a summary procedure upon them which denies them fundamental notice and a fair hearing required by the due process requirements of the Fifth Amendment.

The appellants were not parties to any judicial proceeding. They were witnesses called upon to give evidence, if any they had, of possible violations of the laws of the United States. They were appearing under subpoena. The record discloses that their counsel was available to advise them. Their contention, therefore, based upon due process is without merit. *United States v. Weinberg*, ... F.2d .... (9th Cir. Jan. 18, 1971).

The judgment of the district court is affirmed.

APPENDIX 2.

Order.

United States District Court, Central District of California.

In the Matter of Charles Joseph Kastigar.

Filed: Feb. 11, 1971.

The United States of America, having made written and oral application for an order compelling Charles Joseph Kastigar to testify and produce evidence before a duly constituted grand jury of the Central District of California, pursuant to Title 18, United States Code, Sections 6002 and 6003, and

Charles Joseph Kastigar, on September 9, 1970, having declined to answer questions before the grand jury by claiming his privilege against self-incrimination, the grand jury being then engaged in an inquiry into alleged violations of laws of the United States; and

The application for immunity having been approved by the Attorney General of the United States and made by the United States Attorney in whose judgment the testimony sought is necessary to the public interest, it is

ORDERED that Charles Joseph Kastigar appear forthwith before the grand jury and testify and produce evidence with respect to all matters under inquiry by the grand jury.

DATED: Feb. 11, 1971.

/s/ E. Avery Crary
United States District Judge

APPENDIX 3.

Order.

United States District Court, Central District of California.

In the Matter of Michael Gorean Stewart.

Filed: Feb. 11, 1971.

The United States of America, having made written and oral application for an order compelling Michael Gorean Stewart to testify and produce evidence before a duly constituted grand jury of the Central District of California, pursuant to Title 18, United States Code, Sections 6002 and 6003, and

Michael Gorean Stewart, being likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, the grand jury being engaged in an inquiry into alleged violations of laws of the United States; and

The application for immunity having been approved by the Attorney General of the United States and made by the United States Attorney in whose judgment the testimony sought is necessary to the public interest, it is

ORDERED that Michael Gorean Stewart appear forthwith before the grand jury and testify and produce evidence with respect to all matters under inquiry by the grand jury.

DATED: Feb. 11, 1971.

E. Avery Crary
United States District Judge

APPENDIX 4.

Order.

United States Court of Appeals, for the Ninth Circuit.

Michael Gorean Stewart, Appellant, v. United States of America, Appellee. No. 71-1212.

Charles Joseph Kastigar, Appellant, v. United States of America, Appellee. No. 71-1213.

Filed: Feb. 19, 1971.

Before: MERRILL and BROWNING, Circuit Judges.

The above appeals are consolidated. The orders appealed from are stayed pending disposition of the appeal. *Cf. United States v. Weinberg,* No. 26,903 (order filed December 23, 1970). The appeal is expedited pursuant to 18 U.S.C. § 1826(b). Appellants' opening briefs shall be filed by February 25, 1971, appellee's brief by March 4, and appellants' reply briefs by March 8. Oral argument will be heard during the week of March 8 at a time to be fixed by the Clerk of the Court.

CHARLES M. MERRILL
/s/ James D. Browning
Circuit Judges

February 19, 1971.

APPENDIX 5.

United States Court of Appeals for the Ninth Circuit.

Michael Gorean Stewart, Appellant, v. United States of America, Appellee. No. 71-1212.

Charles Joseph Kastigar, Appellant, v. United States of America, Appellee. No. 71-1213.

Filed: March 9, 1971.

Appeal from the United States District Court for the Central District of California.

Before: KOELSCH, HUFSTEDLER and TRASK, Circuit Judges

PER CURIAM:

Pursuant to Section 301(b) of the Organized Crime Control Act of 1970 (28 U.S.C. § 1826(b)), and particularly the time limitation therein, it is the decision of this court that the orders of the United States District Court, entered in each of the above cases on February 11, 1971, adjudging the respective appellees in civil contempt and ordering them confined, are AFFIRMED. An opinion of this panel will be filed in due course.

STEWART v. UNITED STATES—No. 71-1212

KASTIGAR v. UNITED STATES—No. 71-1213

MEMORANDUM TO CLERK LUCK:

All judges concerned having concurred in the within opinion (or order) the Clerk will please file.

/s/ Merrell W. Trask
United States Circuit Judge